

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: : Docket #20cv4669  
ATHENA ART FINANCE CORP., :  
Plaintiff, :  
- against - :  
THAT CERTAIN ARTWORK BY :  
JEAN-MICHEL BASQUIAT ENTITLED :  
HUMIDITY, 1982, IN REM, :  
Defendant. : New York, New York  
: June 16, 2022

----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE VALERIE FIGUEREDO,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: GOODWIN PROCTER, LLP  
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2                 THE CLERK: This is the matter of Athena Art  
3 Finance Corp. v. That Certain Artwork by Jean-Michel  
4 Basquiat Entitled Humidity, 1982, In Rem, docket number  
5 22cv4669. The Honorable Valerie Figueiredo presiding.  
6 Counsel, please note your appearance for the record,  
7 stating with plaintiff's counsel.

8

9                 MS. CHRISTINE SAMA: Good afternoon, Your Honor,  
10 Christine Sama, Jonathan Shapiro, and Jim Gatta are on the  
line from Goodwin Procter for Athena.

11

12                 MR. JUDD GROSSMAN: Good afternoon, Your Honor,  
13 Judd Grossman from Grossman LLP on behalf of intervenor-  
plaintiff Satfinance Investment Limited.

14

15                 MR. GREGORY CLARICK: Good afternoon, Your  
16 Honor, this is Gregory Clarick from Clarick Gueron  
17 Reisbaum on behalf of intervenor-plaintiff Delahunty  
Limited.

18

19                 THE COURT: Good afternoon, everyone, this is  
20 Judge Figueiredo. So I have your letters beginning with  
the May 25 letter, the June 13 letter, and then various  
21 June 14 letters. I guess I'd like to get started if  
22 Satfinance wants to give me an overview of where you  
23 currently stand on the discovery issue that you had raised  
24 in the May 25 letter. I know there was some dispute about  
25 whether some of those issues had already been resolved.

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2 So I'd just like to get a sense of what your position is  
3 in terms of the outstanding discovery disputes.

4

MR. GROSSMAN: Thank you, Your Honor, this is  
5 Judd Grossman on behalf of Satfinance. I'll start by  
6 saying obviously discovery in the case is scheduled to  
7 have closed several weeks ago. Our friends at Goodwin  
8 have now entered an appearance and are by all accounts  
9 making good faith efforts to get up to speed, including  
10 collecting according to their estimates nearly 300,000  
11 documents that hadn't previously been collected.

12

So I'm in kind of a difficult position to say  
13 where things are because other than knowing things weren't  
14 done that shouldn't have been done, I don't know what's  
15 missing, I don't know why it's missing, I don't know  
16 whether there was an appropriate search preservation  
17 protocol in place. I'm not sure why certain custodians,  
18 some of whom are no longer with the company, didn't have  
19 their records pulled. So I'm in that difficult position  
20 of not knowing an answer to your question which makes it  
21 difficult to, in turn, identify exactly what remedies  
22 we're entitled to.

23

I'll point out, this isn't the first time,  
24 notwithstanding the opposition's letter, that we raised  
25 the issues with the Court, and this is starting at docket

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2 number 77 where over one year ago we wrote to the Court  
3 identifying Athena's, quote, "continuing discovery default  
4 and seeking an order compelling Athena's immediate  
5 compliance with our document requests." Several days  
6 later, and this is at docket number 78, Athens's then  
7 counsel who recently withdrew wrote, "As of this morning,"  
8 and this was May 4, 2021, "we completed our document  
9 production. Accordingly, counsel's request for a  
10 conference is, we submit, moot."

11

Well, here we are a year later and Athena's new  
counsel is making that very same argument that our request  
is moot, and if we look at footnote 1 of their letter,  
they now represent that, after having collected 275,000  
documents and just starting their review, that somehow  
they can say that they already produced the bulk of their  
documents nearly a year ago.

18

So we're really in the dark here, and other than  
that the baseline remedy that we've outlined in our most  
recent letter, it's difficult to say at this point what  
additional remedies are appropriate. There are a host  
that could be appropriate, but I don't want to get ahead  
of ourselves until we understand why things weren't  
collected, produced, reviewed, and why Athena was  
representing to the Court a year ago that its production

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2 had been complete.

3                   THE COURT: Well, before anyone else  
4 interjects, I'm just kind of, I'm a bit confused as to why  
5 you're telling me discovery was supposed to close a few  
6 weeks ago, that we're still at this point where stuff  
7 hadn't been collected and searched for. So if someone  
8 from Athena's counsel can speak to that.

9                   MS. SAMA: Yes, Your Honor, this is Christine  
10 Sama. You know, Your Honor, we can't speak to all of the  
11 details of what happened before we got involved in the  
12 case, you know, it's been a week since we've been  
13 retained, and in that time we've done a lot of work. You  
14 know, Mr. Grossman just referred to almost 300,000  
15 documents have been collected. That's obviously a very  
16 broad swatch of documents. We're being very inclusive in  
17 terms of all the documents that we're reviewing. And we  
18 do feel confident that that set of documents is, you know,  
19 the full set of documents that we're looking at.

20                  And I think what's important to realize is that  
21 we're looking at this, but there are dropped balls on both  
22 sides here. And I know in our June 13 letter we refer to  
23 the documents that, you know, Athena is looking for as  
24 well. This isn't sort of a one-way street. It seems that  
25 there's been, for whatever reason, this lag here where

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7

2 there are all sorts of open discovery issues that haven't  
3 been pursued until very recently.

4 So we're doing our very best, Your Honor, in the  
5 last week to resolve all those issues on Athena's end as  
6 quickly as possible. We think we've made very good  
7 progress toward that end, and we've collected documents of  
8 five custodians, and we've already started our review.  
9 We're expecting to start producing documents next week.  
10 So the question in our mind is when we're going to see the  
11 same effort put forth by the other parties.

12 MR. GROSSMAN: Your Honor --

13 (interposing)

14 THE COURT: Sorry, just to be clear on what  
15 Athena thinks is missing from the other sides' document  
16 productions that would be.

17 MS. SAMA: Your Honor, that would be the  
18 categories of documents that are outlined in our June 13  
19 letter. So that would be the full set of text messages  
20 and (indiscernible) messages. And also there's various  
21 substantive categories of documents. I can just pull it  
22 up.

23 THE COURT: Documents concerning the U.K.  
24 proceeding, communications with insurers, account ledgers,  
25 okay.

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2 MS. SAMA: That's correct, Your Honor.

3 MR. GROSSMAN: And this is Judd Grossman, Your  
4 Honor. To be very clear, this very much is a one-way  
5 street. It's a one-way street because all these  
6 categories of documents that Athena's new counsel is  
7 identifying were the subject of very detailed objections  
8 and responses that we served on August 30, 2021, all of  
9 these exact requests. Numbers 12, numbers 19, number 32.  
10 We either objected to producing certain categories  
11 outright, for example, documents concerning the U.K.  
12 proceeding, or we identified objections and with  
13 specificity, as the Court's local rules required,  
14 identified the categories of documents that we would  
15 produce. And all of those documents have been produced  
16 with the exception of a handful of documents, not  
17 categories of documents, but documents that were  
18 identified at our client's deposition which is largely  
19 complete which needed to be adjourned for scheduling  
20 purposes and no other reason. So we're literally talking,  
21 I don't know, something like five to ten pages that are I  
22 think ready to go out now.

23 But this is a classic case of misdirection  
24 pointing the finger at us when we've complied with every  
25 single discovery obligation and subject to those very

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2 detailed objections and responses produced all the  
3 documents in our possession.

4 As we pointed out in our letter, it shouldn't be  
5 surprising that in an art transaction like this, our  
6 client, just like Delahunty's client, claims to have  
7 purchased the painting, there aren't going to be that many  
8 documents. Notwithstanding, Athena served dozens and  
9 dozens of requests which results in the hundreds or I  
10 guess more than thousands of pages that we already have  
11 produced. But there isn't anything outstanding from our  
12 end holding up discovery.

13 This is an effort by Athena to say, look, let's  
14 all wipe our hands clean with this and let's start over.  
15 Well, we're two years into the case. Once we are finished  
16 the depositions that had been slated for weeks ago but  
17 then needed to be adjourned, some as a result of this  
18 discovery dispute, others by the way without explanation.  
19 So, for example, we raise this in our letter, we had  
20 served a subpoena on Michael Weisz, the head of the parent  
21 company Yieldstreet, Athena's counsel accepted service for  
22 that subpoena, never served an objection, never served a  
23 response, but never produced the witness.

24 And so this isn't a matter of discovery being  
25 held up by anything on our end. It's pretty egregious

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2 failures, quite frankly, the most egregious I've seen  
3 absent intentional spoliation, and that's what needs to be  
4 addressed here, Your Honor.

5 THE COURT: Can I just ask a follow-up  
6 question, Mr. Grossman? You had indicated that the  
7 document requests that they indicated in their letter,  
8 those repeatedly made and your side responded and objected  
9 to them in August 30 of 2021. And I'm assuming from prior  
10 counsel for Athena there had been no follow-up or any type  
11 of claim of deficiency at that point.

12 MR. GROSSMAN: That's absolutely correct.

13 MS. SAMA: That's not correct, Your Honor. Our  
14 understanding is that those objections were challenged  
15 previously last year, and that that's one of the open  
16 issues that we've been trying to resolve in addition to  
17 these open issue that Athena's been working towards  
18 resolving. And obviously we take a different view. We  
19 don't think that the other party should be able to  
20 withhold documents on the basis of these objections that  
21 we've challenged. We want to work with them on that.  
22 They have, it seems, been unwilling to work with us on it  
23 until this point, and, you know, then we're going to have  
24 a motion on that if they're not going to work with us to  
25 resolve it.

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2 THE COURT: Let me just ask you, you say you  
3 challenged them, but when were they challenged?

4 MS. SAMA: It was a letter, I believe it was in  
5 June. It was a letter in June of last year, Your Honor.

6 MR. GROSSMAN: Our responses were served in  
7 August, Your Honor, August 30. So whatever letter in June  
8 the parties worked through those issues. As I say, our  
9 client's deposition went forward. It didn't go forward  
10 under a reservation of rights because of documents  
11 outstanding. At that deposition a handful of pages were  
12 identified that hadn't been produced, one of which, for  
13 example, by the way, we had previously said in our  
14 objections and responses we wouldn't produce, but we  
15 agreed to reconsider that, and we're not producing that  
16 document. But this was never an issue that came to a  
17 head, until now, until we're trying to point the finger  
18 the other way.

19 MR. CLARICK: Your Honor, I don't mean to  
20 interrupt, but this is Gregory Clarick for Delahunty, and  
21 I just want to make clear that Delahunty is in exactly the  
22 same position as Satfinance insofar as having responded to  
23 the document requests in May and in August I believe of  
24 2021 with detailed responses and objections, making clear  
25 what we would produce and what we were objecting to

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2 produce. And then we, in fact, did our document review  
3 based on those objections, having not, you know, having no  
4 open ongoing dispute with Athena with its prior counsel.  
5 And we spent a lot of money pulling documents and  
6 reviewing documents and make that production, and our  
7 client was deposed a month ago, you know, seven, eight  
8 months later. And we never heard, you know, again, about  
9 any problem with our responses and objections.

10

And we submit, just like (indiscernible)  
11 submitting certainly, that it's far, far too late for  
12 Athena to come back in with new counsel and try to reopen  
13 discovery that's already occurred, including to reopen and  
14 address objections that apparently new counsel has  
15 concerns about that should've happened a year ago before  
16 we did our production, before we did our document review  
17 and production, and during the time when discovery,  
18 document discovery was ongoing.

19

MS. SAMA: Your Honor, if I may, there was a  
20 letter in 2021 and also a letter last month that addressed  
21 these issues. We're looking at the same timetable as the  
22 other parties in terms of the timeline and following up on  
23 discovery issues. We also sent a letter on these issues  
24 last Friday. We've never received a response. We asked  
25 for a response. We still haven't received a response.

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2 And we tried to discuss some of these issues as recently  
3 as yesterday, and the call was cancelled. So we're  
4 looking at the same timetable, and these are certainly  
5 issues that have been on the table. They're not new  
6 issues that are being manufactured now.

7

THE COURT: Well, let me just ask you, if  
8 they're not new issues, then presumably you'd have letters  
9 dated after August 30, 2021 and something far less recent  
10 than last week where you would've raised objections to  
11 their objection.

12

MS. SAMA: We do, Your Honor.

13

THE COURT: Okay, I mean I think, I understand  
14 their argument that these were objections made almost a  
15 year ago at this point. So I do tend to agree that if the  
16 first time you're raising these objections is in May of  
17 2022, that that would be problematic.

18

MS. SAMA: Yeah, that's not the case, Your  
19 Honor. There was a letter last year, and we can get you  
20 the exact date, but the first time these issues were  
21 raised was not in May of 2022.

22

MR. GROSSMAN: Your Honor, this is Judd  
23 Grossman. The issues were addressed, and that's why  
24 Athena proceeded with every single deposition, three  
25 depositions of my client, one I believe of Delahunty with

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2 two more scheduled. The May 24 letter that was just sent  
3 that's being referenced was following our client's  
4 deposition. It's what I referenced before which said,  
5 hey, can you please reconsider producing certain documents  
6 that you previously objected to and didn't produce. And  
7 as I said, in one of those cases we are willing to  
8 reconsider it. But this was all not in response to our  
9 August 31, 2021 objection; these were issues that came up  
10 at the deposition which they proceeded with with no  
11 objection.

12

MS. SAMA: Your Honor, this is absolutely  
incorrect. There have been open issues on both sides  
going back a year, longer than a year, close to 18 months  
ago. There's been no waiver. That's just not correct.

16

THE COURT: Well, I guess I - on that plane, I  
would just hope to see these letters where these issues  
were raised in a more timely fashion. So I'm happy to put  
this aside until those letters, until you find the letters  
and we can discuss that separately.

21

I guess we still have though outstanding the  
issues raised in the May 25 letter with regard to the  
document collection. And so I mean I - I understand that  
you guys were just recently retained and are new counsel,  
and I understand you're making an effort to collect and

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2 search for the documents. How much time do you need to  
3 get the collection completed and the documents produced?

4 MS. SAMA: Well, we're expecting to produce our  
5 first documents next week, Your Honor, and we just started  
6 producing the documents. So we're going to need a little  
7 bit of time to see how long it's going to take to get  
8 through the entire set. Obviously, it's a large set. We  
9 don't expect to produce 300,000 documents, but it's only  
10 been a few days, so we're trying to sort that out.

11 MR. GROSSMAN: Your Honor, this is Judd  
12 Grossman on behalf of SIL. In our May 25 letter, again,  
13 we asked for several remedies, and, again, in our most  
14 recent letter, which was June 14, based on our discussions  
15 with new counsel, additional remedies that we believe at  
16 this point we're entitled to, for example, that plaintiff  
17 at its own expense de-dupe its next productions. We heard  
18 from them the other day that they're going through these  
19 hundreds of thousands of documents and they'll produce  
20 everything that's responsive whether or not they've  
21 already produced it. Well, that's a burden and a cost  
22 that should not be shifted to us in any case but  
23 especially where discovery has closed.

24 Again, we are not faulting new counsel at all.  
25 I appreciate all of their effort. But their client has a

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2 very experienced in-house lawyer, a litigator with ten  
3 years plus of experience, big firm law experience, and art  
4 law, and we learned recently that she was (indiscernible)  
5 or spearheaded the collection and production process. If  
6 we are going to be intelligently addressing their  
7 responses and also revisiting any other issues, it's only  
8 appropriate that we learn exactly what happens, what  
9 didn't happen, and why. And so to the extent there'll be  
10 supplemental letters to the Court outlining what this is  
11 being made on this next go-around, we respectfully submit  
12 that it's essential that Athena provide that information  
13 as well.

14

THE COURT: So I take your point. I'm inclined  
15 to set, as you requested, a date certain for the  
16 plaintiffs to finally complete their production. I'm  
17 still kind of - I'm somewhat surprised that it's gone this  
18 far and the production is this far behind. I understand  
19 that they have new counsel, and, again, I'm not faulting  
20 count at all, but I think it would be fair to get an  
21 explanation from inhouse counsel for Athena for why these  
22 documents weren't collected earlier.

23

MS. SAMA: I'm surprised as well, Your Honor.  
24 But we're very surprised that on both sides it had been a  
25 year, year and a half, and there are all of these issues,

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2 discovery issues that hadn't been resolved and that were  
3 open and outstanding.

4 THE COURT: Well, on both sides' question, I'm  
5 still, you know, I'd like to just see the letters where  
6 these issues were raised in the fall of 2021.

7 MS. SAMA: No problem, Your Honor.

8 THE COURT: So on a discovery schedule, do the  
9 sides have some suggestion as to what dates they think  
10 would be fair?

11 MS. SAMA: We would ask for one month, Your  
12 Honor.

13 MR. GROSSMAN: This is Judd Grossman. No  
14 objection to the amount of time. I understand it's a lot  
15 of work to be done. Of course, so without waiving any of  
16 our objections and rights which we've already outlined.

17 THE COURT: Okay, and then the request is also  
18 to set the party deposition deadline two weeks after  
19 plaintiffs' production deadline?

20 MR. GROSSMAN: Well, Your Honor, this is Judd  
21 Grossman. It really depends on the volume of the  
22 production. If we're going to be getting tens of  
23 thousands of new documents that should've been produced, I  
24 submit that two weeks may not be enough for party  
25 depositions. We have other depositions, as I mentioned,

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2 that were scheduled but cancelled by Athena without  
3 explanation, those we would like to see be scheduled  
4 immediately, and that includes the deposition of Michael  
5 Weisz.

6 MS. SAMA: Your Honor, we disagree with the  
7 characterization of the deposition scheduling, but we're  
8 happy to meet and confer to the extent that Mr. Grossman  
9 doesn't know when he (indiscernible) the depositions now  
10 and we can sort that out.

11 THE COURT: Well, why don't we go ahead and set  
12 like a final date by which - so it sound to me like the  
13 parties think that one additional month is all that's  
14 needed to review the documents and produce them, and then  
15 I'd like to just set an outside date for the completion of  
16 all depositions.

17 MS. SAMA: Well, Your Honor, just to be clear  
18 though, one month was the amount of time that we would be  
19 able to fulfill the review that we're doing, but we don't  
20 know how long it would take Mr. Grossman and his clients  
21 to fulfill their outstanding obligation.

22 MR. GROSSMAN: Yeah, that's more than enough  
23 time because, in all fairness and with all due respect, a  
24 handful of pages can be given to by next week.

25 MS. SAMA: We don't believe though that it's a

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2 handful of pages. We understand that that's, you know,  
3 your position, Mr. Grossman and what you think is  
4 outstanding, but we think it's a lot more than that. So  
5 we want to make sure that we have adequate time for that.  
6 And now so we want to meet and confer on this.

7 THE COURT: So how about we do this, I am - I'm  
8 inclined to say that you should take, you know, take an  
9 extra month, take two months to finish the outstanding  
10 discovery issues, and when I say outstanding discovery  
11 issues, I do think that unless there's some letters from  
12 the fall of '21 raising these objections on those  
13 documents, you know, the objections raised in May of 2022  
14 would be untimely.

15 MS. SAMA: We understand, Your Honor. We'll  
16 provide the letters.

17 THE COURT: Okay, so I can set a two-month  
18 deadline for the conclusion of all document discovery, and  
19 then, again, I'd just like to give you a deadline by which  
20 all depositions are to be finished so we can get this case  
21 moving. So if you should tell me how much time you think  
22 you need, if you'd like to meet and confer and come back  
23 with a proposal, that's fine too.

24 MR. GROSSMAN: Thank you, and I that perhaps  
25 makes sense once Athena lets us know what the total volume

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2 of new documents will be. I just for clarity's sake, with  
3 these supplemental submissions and whatever letters  
4 Athena's going to bring to the Court's attention that they  
5 claim opens up new issues, we still would like, and if  
6 necessary the opportunity to brief it, an order that as  
7 far as de-duping goes that that is their obligation, it's  
8 their burden, and it's their expense.

9 MS. SAMA: Your Honor, we are happy to do de-  
10 duplicate or not to duplicate in any different way. I  
11 just, I have to say that the first we're hearing about  
12 this issue or objection about de-duplicating was in the  
13 letter that we received on June 14. We're happy to  
14 discuss that with you, and it's not a problem. We view  
15 that as more of a technical issue.

16 MR. GROSSMAN: Okay, well, just to be clear,  
17 because I know it's not a problem to discuss, but if it's  
18 an agreement that it'll be done, then we have nothing to  
19 write to the Court about.

20 MS. SAMA: Yeah, we should discuss the matter  
21 what should be done.

22 THE COURT: Okay, so it sounds like you all are  
23 going to meet and confer, decide on the de-duping issue,  
24 decide on a potential schedule for depositions, and if you  
25 think two months is doable, because I don't want to have

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2 to come back and reset the deadlines. But if you think  
3 two months is all you need for the completion of the  
4 document production, then I can go ahead and issue an  
5 order setting that deadline.

6 MS. SAMA: Yes, for Athena, yes, Your Honor,  
7 but to be clear, we think that we can complete our review  
8 in two months. We are not certain of the other parties  
9 can complete their review in that amount of time. We  
10 think probably not maybe.

11 MR. GROSSMAN: You know what, Your Honor, the  
12 one month was fine with us. We don't need the two months.  
13 But one month is fine, and it sounds like it's fine for  
14 Athena as well.

15 MR. CLARICK: And for Delahunty, Your Honor,  
16 either one or two months is fine. We have no objection,  
17 and we're confident that we'll be able to complete  
18 anything that's actually due within that timeframe.

19 THE COURT: Okay, well, given --

20 MS. SAMA: Your Honor, we just --

21 THE COURT: Sorry, go ahead.

22 MS. SAMA: Apologies, Your Honor.

23 THE COURT: No, no, go ahead.

24 MS. SAMA: We just don't want to be prejudiced  
25 in resolving the issues that are of concern to us.

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2 THE COURT: No, I understand. If you can come  
3 back and show that the objections you're raising now were  
4 objections that were timely raised, and that requires the  
5 other side to produce more documents and then they need  
6 more time, I understand that that might require an  
7 adjustment. But I'd like to just set as firm a date as we  
8 can so that we can keep this moving. So since all the  
9 parties seem to say that one month is enough for now  
10 unless something else pops up, I'm going to go ahead and  
11 issue an order setting the deadline for the document  
12 production in one month, and then you will come back to me  
13 with a proposed schedule for completing all of the  
14 depositions.

15

MS. SAMA: Thank you, Your Honor.

16

MR. GROSSMAN: Your Honor, again, this is Judd  
17 Grossman. In the interest of moving things along, we'd  
18 ask that the deposition of Michael Weisz be scheduled now.  
19 That doesn't need to await the production of party  
20 discovery. It was a limited scope of information we  
21 sought from Mr. Weisz. We never got an objection, we  
22 never got a response other than an agreement to accept  
23 service on his behalf. So we'd like that to be ordered to  
24 move forward now while all of this other document  
25 discovery is being collected and produced by Athena.

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2 THE COURT: Yes, and I'm sorry, I didn't mean  
3 to suggest that depositions can't go forward during this  
4 time. If you think there's a deposition you can take that  
5 doesn't require whatever production is coming, you should,  
6 of course, schedule it. I just wanted to set an outside  
7 date by which all depositions had to be completed. So if  
8 you think you can move forward with Mr. Weisz's  
9 deposition, I don't see why it should have to wait until  
10 the completion of the production of the documents.

11

MR. GROSSMAN: Thank you very much.

12

THE COURT: If that's everything, then I think  
13 we're adjourned.

14

MR. GROSSMAN: Thank you, Your Honor.

15

THE COURT: Does anybody have anything else?

16

MS. SAMA: Thank you, Your Honor.

17

MR. CLARICK: No, Your Honor, thank you.

18

MR. GROSSMAN: Thank you so much.

19

(Whereupon the matter is adjourned.)

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2                   C E R T I F I C A T E  
3

4                   I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the United States District  
6 Court, Southern District of New York, Athena Art Finance  
7 Corp. versus That Certain Artwork by Jean-Michel Basquiat  
8 Entitled Humidity, Docket #22cv4669, was prepared using  
9 PC-based transcription software and is a true and accurate  
10 record of the proceedings.

11

12

13 Signature \_\_\_\_\_

*Carole Ludwig*

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Carole Ludwig

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Date: June 20, 2022

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